

AMENDED IN ASSEMBLY SEPTEMBER 2, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 9, 2015

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 383

Introduced by Senator Wieckowski

February 24, 2015

An act to ~~amend Section 472~~ *amend, add, and repeal Sections 472 and 472a* of, and to add ~~and repeal~~ *and repeal* Section 430.41 ~~to, of,~~ the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Wieckowski. Civil actions: objections to pleadings.

Under existing law, a party in a civil action may object to a complaint, cross-complaint, or answer by demurrer, as specified. *Existing law authorizes a party to amend a pleading once without leave of the court at any time before an answer or demurrer is filed, or after a demurrer is filed and before the trial of the issue of law thereon.*

~~This bill, until January 1, 2021, bill~~ would require a demurring party *in certain civil actions*, before filing the demurrer, to engage in a specified meet and confer process with the party who filed the pleading demurred to for the purpose of determining whether an agreement can be reached as to the filing of an amended pleading that would resolve the objections to be raised in the demurrer. *The bill would prohibit a party from amending a complaint or cross-complaint more than 3 times*

in response to a demurrer filed before the case is at issue, except as specified. The bill would prohibit a party from demurring to a pleading that is amended following a sustained demurrer as to any portion of the amended pleading on grounds that could have been raised by the prior demurrer.

This bill would also authorize a party to amend a pleading after a demurrer is filed but before it is heard by the court if the amended pleading is filed and served before the date for filing an opposition to the demurrer. The bill would authorize a party to amend a pleading after the date for filing an opposition to the demurrer upon stipulation by the parties.

The bill would repeal its provisions on January 1, 2021.

The bill would require ~~the~~ a demurring party, in some circumstances, to file a declaration under penalty of perjury. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 430.41 is added to the Code of Civil
- 2 Procedure, to read:
- 3 430.41. (a) Before filing a demurrer pursuant to this chapter,
- 4 the demurring party shall meet and confer in person or by telephone
- 5 with the party who filed the pleading that is subject to demurrer
- 6 for the purpose of determining whether an agreement can be
- 7 reached that would resolve the objections to be raised in the
- 8 demurrer. If an amended complaint, cross-complaint, or answer
- 9 is filed, the responding party shall meet and confer again with the
- 10 party who filed the amended pleading before filing a demurrer to
- 11 the amended pleading.
- 12 (1) As part of the meet and confer process, the demurring party
- 13 shall identify all of the specific causes of action that it believes are
- 14 subject to demurrer and identify with legal support the basis of the

1 deficiencies. The party who filed the complaint, cross-complaint,
2 or answer shall provide legal support for its position that the
3 pleading is legally sufficient or, in the alternative, how the
4 complaint, cross-complaint, or answer could be amended to cure
5 any legal insufficiency.

6 (2) The parties shall meet and confer at least five days before
7 the date the responsive pleading is due. If the parties are not able
8 to meet and confer at least five days prior to the date the responsive
9 pleading is due, the demurring party shall be granted an automatic
10 30-day extension of time within which to file a responsive pleading,
11 by filing and serving, on or before the date on which a demurrer
12 would be due, a declaration stating under penalty of perjury that
13 a good faith attempt to meet and confer was made and explaining
14 the reasons why the parties could not meet and confer. The 30-day
15 extension shall commence from the date the responsive pleading
16 was previously due, and the demurring party shall not be subject
17 to default during the period of the extension. Any further extensions
18 shall be obtained by court order upon a showing of good cause.

19 (3) The demurring party shall file and serve with the demurrer
20 a declaration stating either of the following:

21 (A) The means by which the demurring party met and conferred
22 with the party who filed the pleading subject to demurrer, and that
23 the parties did not reach an agreement ~~as to amendment of all~~
24 ~~challenged portions of the pleading; resolving the objections raised~~
25 ~~in the demurrer.~~

26 (B) ~~That opposing counsel the party who filed the pleading~~
27 ~~subject to demurrer~~ failed to respond to the meet and confer request
28 of the demurring party or otherwise failed to meet and confer in
29 good faith.

30 (4) Any determination by the court that the meet and confer
31 process was insufficient shall not be grounds to overrule or sustain
32 a demurrer.

33 (b) ~~(4)~~ A party demurring to a pleading that has been amended
34 after a demurrer to an earlier version of the pleading was sustained
35 shall not demur to any portion of the amended complaint,
36 cross-complaint, or answer on grounds that could have been raised
37 by demurrer to the earlier version of the complaint,
38 cross-complaint, or answer.

39 ~~(2) If a demurrer is overruled as to a cause of action and that~~
40 ~~cause of action is not further amended, the demurring party~~

1 ~~preserves its right to appeal after final judgment without filing a~~
2 ~~further demurrer.~~

3 (c) If a court sustains a demurrer to one or more causes of action
4 and grants leave to amend, the court may order a conference of
5 the parties before an amended complaint or cross-complaint or a
6 demurrer to an amended complaint or cross-complaint, may be
7 filed. If a conference is held, the court shall not preclude a party
8 from filing a demurrer and the time to file a demurrer shall not
9 begin until after the conference has concluded. Nothing in this
10 section prohibits the court from ordering a conference on its own
11 motion at any time or prevents a party from requesting that the
12 court order a conference to be held.

13 (d) This section does not apply to the following civil actions:

14 (1) An action in which a party not represented by counsel is
15 incarcerated in a local, state, or federal correctional institution.

16 (2) A proceeding in forcible entry, forcible detainer, or unlawful
17 detainer.

18 (e) (1) *In response to a demurrer and prior to the case being*
19 *at issue, a complaint or cross-complaint shall not be amended*
20 *more than three times, absent an offer to the trial court as to such*
21 *additional facts to be pleaded that there is a reasonable possibility*
22 *the defect can be cured to state a cause of action. The*
23 *three-amendment limit shall not include an amendment made*
24 *without leave of the court pursuant to Section 472, provided the*
25 *amendment is made before a demurrer to the original complaint*
26 *or cross-complaint is filed.*

27 (2) *Nothing in this section affects the rights of a party to amend*
28 *its pleading or respond to an amended pleading after the case is*
29 *at issue.*

30 (f) *Nothing in this section affects appellate review or the rights*
31 *of a party pursuant to Section 430.80.*

32 (g) *If a demurrer is overruled as to a cause of action and that*
33 *cause of action is not further amended, the demurring party*
34 *preserves its right to appeal after final judgment without filing a*
35 *further demurrer.*

36 (e)

37 (h) This section shall remain in effect only until January 1, 2021,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before January 1, 2021, deletes or extends that date.

1 SEC. 2. Section 472 of the Code of Civil Procedure is amended
2 to read:

3 472. (a) A party may amend its pleading once without leave
4 of the court at any time before the answer or demurrer is filed, or
5 after a demurrer is filed but before the demurrer is heard if the
6 amended complaint, cross-complaint, or answer is filed and served
7 no later than the date for filing an opposition to the demurrer. A
8 party may amend the complaint, cross-complaint, or answer after
9 the date for filing an opposition to the demurrer, upon stipulation
10 by the parties. The time for responding to an amended pleading
11 shall be computed from the date of service of the amended
12 pleading.

13 (b) *This section shall remain in effect only until January 1, 2021,*
14 *and as of that date is repealed, unless a later enacted statute, that*
15 *is enacted before January 1, 2021, deletes or extends that date.*

16 SEC. 3. Section 472 is added to the Code of Civil Procedure,
17 to read:

18 472. (a) *Any pleading may be amended once by the party of*
19 *course, and without costs, at any time before the answer or*
20 *demurrer is filed, or after demurrer and before the trial of the*
21 *issue of law thereon, by filing the same as amended and serving*
22 *a copy on the adverse party, and the time in which the adverse*
23 *party must respond thereto shall be computed from the date of*
24 *notice of the amendment.*

25 (b) *This section shall become operative on January 1, 2021.*

26 SEC. 4. Section 472a of the Code of Civil Procedure is
27 amended to read:

28 472a. (a) A demurrer is not waived by an answer filed at the
29 same time.

30 (b) Except as otherwise provided by rule adopted by the Judicial
31 Council, ~~when~~ if a demurrer to a complaint or to a cross-complaint
32 is overruled and there is no answer filed, the court shall allow an
33 answer to be filed upon such terms as may be just. If a demurrer
34 to the answer is overruled, the action shall proceed as if no
35 demurrer had been interposed, and the facts alleged in the answer
36 shall be considered as denied to the extent mentioned in Section
37 431.20.

38 (c) ~~When~~ *Subject to the limitations imposed by subdivision (e)*
39 *of Section 430.41, if a demurrer is sustained, the court may grant*
40 *leave to amend the pleading upon any terms as may be just and*

1 shall fix the time within which the amendment or amended pleading
2 shall be filed. ~~When~~ *If* a demurrer is stricken pursuant to Section
3 436 and there is no answer filed, the court shall allow an answer
4 to be filed on terms that are just.

5 (d) ~~When~~ *If* a motion to strike is granted pursuant to Section
6 436, the court may order that an amendment or amended pleading
7 be filed upon terms it deems proper. ~~When~~ *If* a motion to strike a
8 complaint or cross-complaint, or portion thereof, is denied, the
9 court shall allow the party filing the motion to strike to file an
10 answer.

11 (e) ~~When~~ *If* a motion to dismiss an action pursuant to Article 2
12 (commencing with Section 583.210) of Chapter 1.5 of Title 8 is
13 denied, the court shall allow a pleading to be filed.

14 (f) *This section shall remain in effect only until January 1, 2021,*
15 *and as of that date is repealed, unless a later enacted statute, that*
16 *is enacted before January 1, 2021, deletes or extends that date.*

17 SEC. 5. Section 472a is added to the Code of Civil Procedure,
18 to read:

19 472a. (a) A demurrer is not waived by an answer filed at the
20 same time.

21 (b) *Except as otherwise provided by rule adopted by the Judicial*
22 *Council, if a demurrer to a complaint or to a cross-complaint is*
23 *overruled and there is no answer filed, the court shall allow an*
24 *answer to be filed upon such terms as may be just. If a demurrer*
25 *to the answer is overruled, the action shall proceed as if no*
26 *demurrer had been interposed, and the facts alleged in the answer*
27 *shall be considered as denied to the extent mentioned in Section*
28 *431.20.*

29 (c) *Subject to the limitations imposed by subdivision (e) of*
30 *Section 430.41, if a demurrer is sustained, the court may grant*
31 *leave to amend the pleading upon any terms as may be just and*
32 *shall fix the time within which the amendment or amended pleading*
33 *shall be filed. If a demurrer is stricken pursuant to Section 436*
34 *and there is no answer filed, the court shall allow an answer to*
35 *be filed on terms that are just.*

36 (d) *If a motion to strike is granted pursuant to Section 436, the*
37 *court may order that an amendment or amended pleading be filed*
38 *upon terms it deems proper. If a motion to strike a complaint or*
39 *cross-complaint, or portion thereof, is denied, the court shall allow*
40 *the party filing the motion to strike to file an answer.*

1 (e) *If a motion to dismiss an action pursuant to Article 2*
2 *(commencing with Section 583.210) of Chapter 1.5 of Title 8 is*
3 *denied, the court shall allow a pleading to be filed.*

4 (f) *This section shall become operative on January 1, 2021.*

5 ~~SEC. 3.~~

6 SEC. 6. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.